

### **Remarks**

Claims 1–14 and 21–26 remain in the application, claims 15–20 were previously canceled, and claim 21 has been amended. This transmittal is presented in response to the official office action and is believed to resolve the issues raised by the examiner. Applicant believes the claims as amended to be non-obvious and patentably distinct from all prior art.

#### **OA Item #1a: Claims rejection under 35 USC § 112, 1<sup>st</sup> paragraph – New Matter - Eraser:**

The examiner has rejected claims 1–14 and 21–26 under 35 USC § 112 1<sup>st</sup> paragraph as being non-enabling due to the presence of new matter in the claims. Specifically, the examiner asserts that, the claims are rejected “*for the reasons given in the Office action mailed 5/19/09*”. Applicants respectfully traverse the examiner’s rejection. Applicant’s point out that in the 5/19/09 office action, included in the examiner’s stated reason for the new matter rejection was the applicant’s use of “eraser material” as a claim limitation. Applicants point out that such claim limitation was deleted in the response to the 5/19/09 office action. Accordingly, applicants respectfully request that the examiner withdraw the rejection.

#### **OA Item #1b: Claims rejection under 35 USC § 112, 1<sup>st</sup> paragraph – New Matter - Proportions:**

The examiner has rejected claims 1–14 and 21–26 under 35 USC § 112 1<sup>st</sup> paragraph as being non-enabling due to the presence of new matter in the claims. Specifically, the examiner asserts that, “*the various length/volume recitations previously presented in claims 1, 8, and 21, and further including the newly added recitations added to claim 21 relative to the gap/diameter of the handle/diameter of the candy article are New Matter, not necessarily and inherently supported by the specification as originally filed*”.

With respect to claim 1, applicants respectfully traverse the examiner’s rejection. Applicants urge that all of the recitations of claim 1 are necessarily and inherently supported by the specification as originally filed. The examiner has cited MPEP § 2125 and argued that undimensioned patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes. In response, applicants counter that MPEP § 2125 also states, “*However, the*

*description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art*”. Applicants point out that claim 1 reads in part, “*wherein a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of the result of said container volume minus said funnel volume*”. Applicants further point out that the container was disclosed as having a lower member of “*substantially hollow semi-hemispherical shape*” (see page 6, 1<sup>st</sup> paragraph, line 4) and an upper member of “*substantially hollow semi-hemispherical shape*” (see page 6, 1<sup>st</sup> paragraph, line 7). The two hemispherical members of the container are consistent in each of the five drawing figures with a substantially spherically shaped container. Applicants further point out that the drawings also clearly disclose a cylindrically shaped funnel. Now referring in particular to figure 3C, applicants respectfully point out that the drawing figure expressly depicts a cross-section of a (inverted) spherically shaped container having a substantially cylindrically shaped funnel whose length does not exceed half the length of the spherical container (e.g. does not exceed the length of the hemisphere) and having edible particulate matter occupying the space in the upper container member minus the funnel. Thus applicants respectfully urge that it is indisputable that the combination of the written specification and the drawings – without any “scaling” of the drawings whatsoever and without any need for any dimensions – necessarily and inherently support a “*a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of the result of said container volume minus said funnel volume*” and that such would be readily understood by one of ordinary skill in the art.

With respect to claims 2-7, applicants respectfully traverse the examiner’s rejection. Applicants respectfully point out that claims 2-7 depend from claim 1 which has been shown to be free of new matter and to be enabled. Applicant’s urge that claims 2-7, which include all of the limitations of claim 1, likewise are free of new matter and are enabled.

With respect to claim 8, applicants respectfully traverse the examiner’s rejection. Applicants urge that all of the recitations of claim 8 are necessarily and inherently supported by the specification as originally filed. The examiner has cited MPEP § 2125 and argued that undimensioned patent drawings do not define the precise proportions of the elements and may not be relied on to show

particular sizes. In response, applicants counter that MPEP § 2125 also states, “*However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art*”. Applicants point out that claim 8 reads in part, “*wherein a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of said container volume*”. Applicants further point out that the container was disclosed as having a lower member of “*substantially hollow semi-hemispherical shape*” (see page 6, 1<sup>st</sup> paragraph, line 4) and an upper member of “*substantially hollow semi-hemispherical shape*” (see page 6, 1<sup>st</sup> paragraph, line 7). The two hemispherical members of the container are consistent in each of the five drawing figures with a substantially spherically shaped container. Applicants further point out that the drawings also clearly disclose a cylindrically shaped funnel. Now referring in particular to figure 3C, applicants respectfully point out that the drawing figure depicts a cross-section of a (inverted) spherically shaped container having a substantially cylindrically shaped funnel whose length does not exceed half the length of the spherical container (e.g. does not exceed the length of the hemisphere) and having edible particulate matter occupying the space in the upper container member minus the funnel. Thus applicants respectfully urge that it is indisputable that the combination of the written specification and the drawings – without any “scaling” of the drawings whatsoever and without any need for any dimensions – necessarily and inherently support a “*a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of said container volume*” and that such would be readily understood by one of ordinary skill in the art.

With respect to claims 9-14, applicants respectfully traverse the examiner’s rejection. Applicants respectfully point out that claims 9-14 depend from claim 8 which has been shown to be free of new matter and to be enabled. Applicant’s urge that claims 9-14, which include all of the limitations of claim 8, likewise are free of new matter and are enabled.

With respect to claim 21, applicants have amended claim 21 such that all of the recitations of claim 21 are necessarily and inherently supported by the specification as originally filed.

In the first instance, the examiner has cited MPEP § 2125 and argued that undimensioned patent drawings do not define the precise proportions of the elements and may not be relied on to

show particular sizes. In response, applicants counter that MPEP § 2125 also states, “*However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art*”. Applicants point out that claim 21 reads in part, “*wherein a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of the resultant volume of said container volume minus said funnel volume*”. Applicants further point out that the container was disclosed as having a lower member of “*substantially hollow semi-hemispherical shape*” (see page 6, 1<sup>st</sup> paragraph, line 4) and an upper member of “*substantially hollow semi-hemispherical shape*” (see page 6, 1<sup>st</sup> paragraph, line 7). The two hemispherical members of the container are consistent in each of the five drawing figures with a substantially spherically shaped container. Applicants further point out that the drawings also clearly disclose a cylindrically shaped funnel. Now referring in particular to figure 3C, applicants respectfully point out that the drawing figure depicts a cross-section of a (inverted) spherically shaped container having a substantially cylindrically shaped funnel whose length does not exceed half the length of the spherical container (e.g. does not exceed the length of the hemisphere) and having edible particulate matter occupying the space in the upper container member minus the funnel. Thus applicants respectfully urge that it is indisputable that the combination of the written specification and the drawings – without any “scaling” of the drawings whatsoever and without any need for any dimensions – necessarily and inherently support a “*a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of the resultant volume of said container volume minus said funnel volume*” and that such would be readily understood by one of ordinary skill in the art.

In the second instance applicants point out that claim 21 has been amended to eliminate the specific size ratio of the gap and the specific size ratio of the candy article compared with the handle. As such, applicants urge that all of the recitations of claim 21 are necessarily and inherently supported by the specification as originally filed.

With respect to claims 22-26, applicants respectfully point out that claims 22-26 depend from claim 21 which has been shown to be free of new matter and to be enabled. Applicant’s urge that

claims 22-26, which include all of the limitations of claim 21, likewise are free of new matter and are enabled.

Applicants urge that the above provided amendments and arguments have established claims 1-14 and 21-26 to be free of new matter and to be enabled. Accordingly, applicants respectfully request that the examiner withdraw the rejection.

**OA Item #2: Claims Rejection under 35 USC § 103(a) - Obviousness:**

The examiner has rejected claims 1 – 14 and 21-26 under 35 USC § 103(a) as being unpatentable over the Product Alert (3/23/98) reference as further evidenced by numerous references. Applicants respectfully traverse the examiner rejection and urge that neither Product Alert alone nor Product Alert in combination with the numerous references teach all of applicant's claim limitations.

In establishing the nonobviousness of applicant's invention, applicants refer the examiner to applicant's explanation provided in applicant's previous office action and which for convenience is repeated in this paragraph. Applicants respectfully point out that none of the prior art disclosed a spill resistant container that was specifically adapted to allow a lollipop to be inserted into a container having a funnel, to coat the lollipop with a particulate candy substance, and remove the coated lollipop from the container via the funnel, all without spilling any of the particulate candy substance contained within the container. Applicants note that while the particulate candy substance is flowable, the flow of the particulate candy substance is substantially different from the flow of liquid paint or liquid bubble solution and that the flow of particulate candy substance is not as free as the flow of a liquid such as water. In particular, the particulate candy substance exhibits the ability to hold some degree of bank (i.e. as in the bank of a hole dug in dirt). Thus when rotating the particulate candy substance, the candy will retain a slope as opposed to a liquid which will seek a horizontal level and the particulate candy substance requires greater space in which to flow efficiently than does water. Furthermore, when inserting a lollipop into a quantity of particulate candy substance, resistance is encountered (as opposed to insertion into water wherein virtually no resistance is encountered) and may even be precluded without rotating or shaking the container while inserting the lollipop. Thus, special features of a container apparatus that provides for instance for a specific ratio of volume of the particulate

candy substance as compared to the free volume of the container, or for a gap between a funnel inner end and the candy article of the lollipop so as to enable the rotating insertion and coating of the lollipop, or the adjustment of the combined length of the lollipop and the holder to allow for proper insertion length, are not found in the cited prior art. Applicants urged that the prior art because the prior art did not address the problems encountered in coating a lollipop in a spill resistance container having a funnel because they did not contemplate a spill resistant container that contained a particulate candy substance with a lollipop. Applicants further urge that the absence of such features lend support to the urging that the claimed invention is nonobvious. Applicants further specifically and respectfully urge that all of the claim limitations find support in the specification as originally filed for the reasons fully detailed in the preceding section of this response.

In arguing against applicant's above provided explanation of nonobviousness, the examiner urges that Hoeting et al could shake the Hoeting et al container in order to coat the Hoeting et al lollipop. With all due respect, the examiner's argument reveals that the examiner has failed to appreciate the significance of applicant's invention. As noted by the examiner, the Hoeting et al container has no funnel. Further, the Lollipop of Hoeting et al is not dipped. Thus Hoeting et al never encounters the dipping action resisting forces as are encountered by applicant's invention. In order to overcome such dipping action resisting forces, applicants invented applicant's unique and nonobvious invention which provides for the flow of particulate candy around the outer surface of the lollipop of applicant's invention. Applicants further point out that none of the cited references, alone or in combination, encounter or teach the overcoming of such dipping action resisting forces. Applicant's further point out that the examiner has urged that applicants have only taught a single method of coating a lollipop, namely by shaking the container. Applicants respectfully urge that the examiner's assertion is incorrect. In addition to the coating of a lollipop by the shaking of the container, applicants also teach various orientations of the container, the repositioning into which will cause a lollipop to become coated. For instance, in the first sentence of the abstract, applicants taught, "*The spill-proof candy container is an invention that because of its unique geometry and design, will when oriented in any position prevent spillage of its edible particulate candy contents when filled to no more than a predetermined amount*". In combination with this, applicants taught by virtue of figure 3B, a container

orientation with the particulate candy in the side of the container and the lollipop inserted in the container and not immersed in the particulate candy. In such orientation, the lollipop may be inserted and withdrawn from the container not only without spilling the particulate candy contents, but without experiencing dipping action resisting forces which would otherwise be encountered. Applicants further taught by virtue of figure 3A, a container orientation with the particulate candy in the bottom of the container and the lollipop inserted in the container and immersed in the particulate candy. By moving from the orientation of Figure 3B to the orientation of figure 3A, the lollipop would become coated. Thus applicants have taught orienting the container and applicants have provided exemplary orientations, the use of which will cause the lollipop to be coated. Applicants urge that such is readily understood by one having ordinary skill in the art when viewing the application as a whole.

In any event, even if applicants had taught coating only by shaking, the inventive configuration disclosed by applicants still provides for the coating as described above and none of the prior art, alone or in combination, and most certainly not Hoeting et al which does not even have a funnel – teach such structure and with a candy powder. Given applicants amendments, responses, and explanations, applicants respectfully request that the examiner withdraw the rejection.

**OA Item #3: Claims Rejection under 35 USC § 103(a) - Obviousness:**

The examiner has rejected claims 1 – 14 and 21-26 under 35 USC § 103(a) as being unpatentable over the Price (US 3,840,678) as further evidenced by numerous references. Applicants respectfully traverse the examiner rejection and urge that neither Product Alert alone nor Product Alert in combination with the numerous references teach all of applicant's claim limitations.

In establishing the nonobviousness of applicant's invention, applicants refer the examiner to applicant's explanation provided in applicant's previous office action and which for convenience is repeated in this paragraph. Applicants respectfully point out that none of the prior art disclosed a spill resistant container that was specifically adapted to allow a lollipop to be inserted into a container having a funnel, to coat the lollipop with a particulate candy substance, and remove the coated lollipop from the container via the funnel, all without spilling any of the particulate candy substance contained within the container. Applicants note that while the particulate candy substance is flowable, the flow

of the particulate candy substance is substantially different from the flow of liquid paint or liquid bubble solution and that the flow of particulate candy substance is not as free as the flow of a liquid such as water. In particular, the particulate candy substance exhibits the ability to hold some degree of bank (i.e. as in the bank of a hole dug in dirt). Thus when rotating the particulate candy substance, the candy will retain a slope as opposed to a liquid which will seek a horizontal level and the particulate candy substance requires greater space in which to flow efficiently than does water. Furthermore, when inserting a lollipop into a quantity of particulate candy substance, resistance is encountered (as opposed to insertion into water wherein virtually no resistance is encountered) and may even be precluded without rotating or shaking the container while inserting the lollipop. Thus, special features of a container apparatus that provides for instance for a specific ratio of volume of the particulate candy substance as compared to the free volume of the container, or for a gap between a funnel inner end and the candy article of the lollipop so as to enable the rotating insertion and coating of the lollipop, or the adjustment of the combined length of the lollipop and the holder to allow for proper insertion length, are not found in the cited prior art. Applicants urged that the prior art because the prior art did not address the problems encountered in coating a lollipop in a spill resistance container having a funnel because they did not contemplate a spill resistant container that contained a particulate candy substance with a lollipop. Applicants further urge that the absence of such features lend support to the urging that the claimed invention is nonobvious. Applicants further specifically and respectfully urge that all of the claim limitations find support in the specification as originally filed for the reasons fully detailed in the preceding section of this response.

In arguing against applicant's above provided explanation of nonobviousness, the examiner urges that Hoeting et al could shake the Hoeting et al container in order to coat the Hoeting et al lollipop. With all due respect, the examiner's argument reveals that the examiner has failed to appreciate the significance of applicant's invention. As noted by the examiner, the Hoeting et al container has no funnel. Further, the Lollipop of Hoeting et al is not dipped. Thus Hoeting et al never encounters the dipping action resisting forces as are encountered by applicant's invention. In order to overcome such dipping action resisting forces, applicants invented applicant's unique and nonobvious invention which provides for the flow of particulate candy around the outer surface of the lollipop of

applicant's invention. Applicants further point out that none of the cited references, alone or in combination, encounter or teach the overcoming of such dipping action resisting forces. Applicant's further point out that the examiner has urged that applicants have only taught a single method of coating a lollipop, namely by shaking the container. Applicants respectfully urge that the examiner's assertion is incorrect. In addition to the coating of a lollipop by the shaking of the container, applicants also teach various orientations of the container, the repositioning into which will cause a lollipop to become coated. For instance, in the first sentence of the abstract, applicants taught, "*The spill-proof candy container is an invention that because of its unique geometry and design, will when oriented in any position prevent spillage of its edible particulate candy contents when filled to no more than a predetermined amount*". In combination with this, applicants taught by virtue of figure 3B, a container orientation with the particulate candy in the side of the container and the lollipop inserted in the container and not immersed in the particulate candy. In such orientation, the lollipop may be inserted and withdrawn from the container not only without spilling the particulate candy contents, but without experiencing dipping action resisting forces which would otherwise be encountered. Applicants further taught by virtue of figure 3A, a container orientation with the particulate candy in the bottom of the container and the lollipop inserted in the container and immersed in the particulate candy. By moving from the orientation of Figure 3B to the orientation of figure 3A, the lollipop would become coated. Thus applicants have taught orienting the container and applicants have provided exemplary orientations, the use of which will cause the lollipop to be coated. Applicants urge that such is readily understood by one having ordinary skill in the art when viewing the application as a whole.

In any event, even if applicants had taught coating only by shaking, the inventive configuration disclose by applicants still provides for the coating as described above and none of the prior art, alone or in combination, and most certainly not Hoeting et al which does not even have a funnel – teach such structure and with a candy powder. Given applicants amendments, responses, and explanations, applicants respectfully request that the examiner withdraw the rejection.

**Conclusion:**

Applicant notes that any amendments made by this paper which are not specifically discussed herein are made solely for the purpose of more clearly and particularly pointing out and claiming applicant's invention.

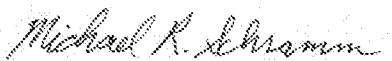
Applicant specifically reserves the right to prosecute claims of broader and differing scope than those presented herein in a continuation application.

Applicant submits that the amendments and the arguments presented herein have placed the claims in condition for allowance. Action in accordance therewith is earnestly solicited.

If the examiner has any questions or comments which may be resolved over the telephone, the examiner is requested to call Michael R. Schramm at 801-710-7793.

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Respectfully submitted,



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